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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 39491
)	
v.)	TWIN FALLS CO. NO. CR 2010-6914
)	
ALEX LEE PETTIT,)	REPLY BRIEF
)	
Defendant-Appellant.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS

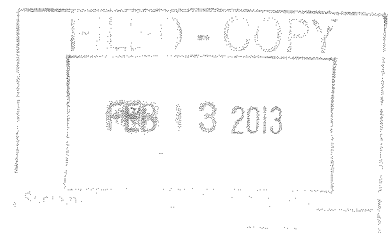
HONORABLE G. RICHARD BEVAN
District Judge

SARA B. THOMAS
State Appellate Public Defender
State of Idaho
I.S.B. #5867

ERIK R. LEHTINEN
Chief, Appellate Unit
I.S.B. #6247

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
3050 N. Lake Harbor Lane, Suite 100
Boise, ID 83703
(208) 334-2712

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534



ATTORNEYS FOR
DEFENDANT-APPELLANT

ATTORNEY FOR
PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

Alex Lee Pettit appeals from his judgment of conviction for possession of a controlled substance with the intent to deliver. He asserts that the district court erred by requiring him to offer irrelevant testimony concerning the identity of the person from whom he purchased marijuana in the past. This Reply Brief addresses the State's contention that any error was harmless.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Pettit's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err by requiring Mr. Pettit to offer irrelevant testimony concerning the identity of the person from whom he purchased marijuana in the past?

ARGUMENT

The District Court Erred By Requiring Mr. Pettit To Offer Irrelevant Testimony Concerning The Identity Of The Person From Whom He Purchased Marijuana In The Past

A. Introduction

On appeal, the State assumes that the identity of the source of Mr. Pettit's marijuana was irrelevant but asserts that the error was harmless. Mr. Pettit submits that the State has failed to meet its burden.

B. The District Court Erred By Requiring Mr. Pettit To Offer Irrelevant Testimony Concerning The Identity Of The Person From Whom He Purchased Marijuana In The Past

In the case of objected-to error, the burden is on the State to demonstrate that the error is harmless beyond a reasonable doubt; the appellant carries no burden. See *State v. Perry*, 150 Idaho 209 (2010). "A defendant appealing from an objected-to, non-constitutionally-based error shall have the duty to establish that such an error occurred, at which point the State shall have the burden of demonstrating that the error is harmless beyond a reasonable doubt." *Id.* at 222. This error is not harmless beyond a reasonable doubt.

This evidence was clearly designed to make Mr. Pettit uncomfortable in the front of the jury and it had this effect. The prosecutor asked Mr. Pettit where he got his marijuana. (Tr., p.177, Ls.1-2.) Counsel objected on the basis of relevance. (Tr., p.177, Ls.1-2.) After the court overruled the objection, Mr. Pettit responded, "just from marijuana dealers." (Tr., p.177, Ls.3-4.) When the prosecutor asked, "who?," Mr. Pettit responded, "I mean, do I have to say a name?" (Tr., p.177, Ls.5-6.) The court responded, "Yes, you do." (Tr., p.177, Ls.6-7.) Mr. Pettit then replied, "I mean, there

was a number of – there was – I don't see how this relevant at all to how I – a name of my dealer is relevant to my case. I don't understand." (Tr., p.177, Ls.8-11.)

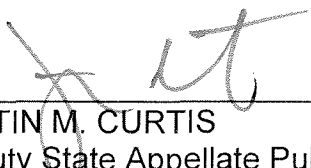
Further, the question served to paint Mr. Pettit as part of the criminal *milieu* of the community who associated with people he was either afraid to, or unwilling to, identify in public. The jury could easily conclude that, because Mr. Pettit was uncomfortable naming names, that he associated with unsavory elements of the community and could have taken that into consideration. Finally, the jury could have concluded that his answer was evasive and should have been answered clearly and could have taken that into consideration during deliberations.

At trial, Mr. Pettit acknowledged that he smoked marijuana for personal use but denied that he sold or distributed his marijuana to anyone. (Tr., p.159, L.18 – p.160, L.25.) The jury could have concluded, based on the prosecutor's questions and Mr. Pettit's responses, that he was more involved in the criminal community due to his hesitation to name the source of his marijuana. Thus, the State has failed to meet its burden that the error was harmless beyond a reasonable doubt.

CONCLUSION

Mr. Pettit requests that this conviction for possession of marijuana with the intent to deliver be vacated and his case remanded for further proceedings.

DATED this 13th day of February, 2013.



JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of February, 2013, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

ALEX LEE PETTIT
469 WAKEFIELD ST
TWIN FALLS ID 83301

G RICHARD BEVAN
DISTRICT COURT JUDGE
E-MAILED BRIEF

GREG J FULLER
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.



EVAN A. SMITH
Administrative Assistant

JMC/eas